

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Forbearance of the Verizon	)	
Telephone Companies Pursuant to	)	WC Docket No. 01-338
47 U.S.C. §160(c)	)	
_____	)	

**REPLY COMMENTS OF THE  
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),<sup>1</sup> through the undersigned and pursuant to the *Public Notice* released by the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau (WCB)<sup>2</sup> and pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>3</sup> hereby submits its reply comments in the above-docketed proceeding. USTA filed comments in this proceeding on September 3, 2002, wherein it urged the Commission to grant the Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. §160(c) (Petition). In these reply comments, USTA addresses the impact that the competitive availability of certain network elements has on the application of Section 271 requirements.

**DISCUSSION**

Some commenters argue that the requirements of Section 271, which provide competitors with access to certain Bell Operating Company (BOC) facilities, provide necessary safeguards or serve as a necessary safety net to address dangers associated with BOC provision of in-region

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<sup>1</sup> USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

<sup>2</sup> *Public Notice*, CC Docket No. 01-338, DA 02-1884 (rel. Aug. 1, 2002) soliciting comment on the Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. §160(c) (*271 Checklist Forbearance*).

long distance service.<sup>4</sup> The alleged safeguards of checklist items four through six and item ten of Section 271(c)(2)(B),<sup>5</sup> which require BOCs to unbundle switching, dedicated transport, high-capacity loops, and signaling, are not necessary if the Commission determines that incumbent local exchange carriers (ILECs) are no longer required to unbundle these same elements pursuant to Section 251(d)(2). If the Commission finds in its *UNE Triennial Review* proceeding<sup>6</sup> that these elements are competitively available – either through third-party providers, self provisioning, or inter-modal sources – then competitors do not need mandatory access to these elements, as required by Section 271(c)(2)(B), to compete with ILECs, generally, or BOCs, specifically. Moreover, the competitive availability of these elements negates any need to require them under Section 271(c)(2)(B) to address the risks of remonopolization of long distance markets.

Another commenter cites to the Supreme Court’s decision in *Verizon Communications, Inc. v. FCC*,<sup>7</sup> noting that “some ‘expensive facilities’ owned by the BOCs are ‘unlikely to be duplicated,’ and certainly not by more than a few competitors,”<sup>8</sup> as evidence that competitors “will continue to need to use resale or to lease network elements to gain a foothold” when

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<sup>3</sup> 47 C.F.R. §§1.415 and 1.419.

<sup>4</sup> See WorldCom Comments at 4 and AT&T Comments at 6.

<sup>5</sup> See 47 U.S.C. 271(c)(2)(B)(iv-vi) and (x).

<sup>6</sup> *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd 22781 (2001) (*UNE Triennial Review*).

Contrary to the claim of some commenters, the Petition is ripe for review and consideration by the Commission. The Petition is tied to the Commission’s decision in the *UNE Triennial Review* proceeding, in which it is evaluating its network element unbundling rules and considering whether there should be any changes to the rules. Not only has the Commission indicated that it intends to issue a decision in this proceeding by the end of the year, but a decision by then is necessary given the partial stay recently issued by the U.S. Court of Appeals for the DC Circuit in *USTA v. FCC*, which will be lifted after January 2, 2003 and which would vacate the Commission’s *UNE Remand* and *Line Sharing* Orders.

<sup>7</sup> *Verizon Communications, Inc. v. FCC*, 122 S.Ct. 1646 (2002).

<sup>8</sup> See PACE Comments at 13, quoting *Verizon Communications, Inc. v. FCC*, 122 S.Ct. at 1668.

entering new markets.<sup>9</sup> Yet, this claim obfuscates what the Supreme Court said. While the Supreme Court noted that some facilities (*i.e.*, network elements) may not be duplicated by competitors because of their expense, the Supreme Court certainly did not make any broad-based statements about what those network elements would be. Nor did the Supreme Court dictate that any particular network elements would remain subject to mandatory unbundling in perpetuity. As USTA noted in its Comments and Reply Comments in the *UNE Triennial Review* proceeding, there are competitive alternatives to the network elements that are the subject of this Petition.<sup>10</sup> In other words, these network elements have been duplicated. Accordingly, these are not the types of network elements for which the Supreme Court intended continued mandatory unbundling.

In sum, if the Commission removes a network element from the unbundled network element list pursuant to Section 251(d)(2), it is acknowledging that such element is competitively available and that facilities-based competition is growing. Forbearance from requiring compliance with Section 271(c)(2)(B) for a network element that has been delisted pursuant to Section 251(d)(2) discourages competitors from unnecessary, continued reliance on BOCs’

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<sup>9</sup> See PACE Comments at 13.

<sup>10</sup> See USTA Comments, *UNE Triennial Review*, at 6-9 and USTA Reply Comments, *UNE Triennial Review*, at 9. See also USTA Comments, *271 Checklist Forbearance*, at 3-4 fn.9.

facilities. Likewise, forbearance fosters competition by encouraging competitors to build their own facilities or to seek out competitive alternatives.

Respectfully submitted,

**UNITED STATES TELECOM ASSOCIATION**

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**CERTIFICATE OF SERVICE**

I, Meena Joshi, do certify that on September 18, 2002, Reply Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.

/s/Meena Joshi \_\_\_\_\_  
Meena Joshi